

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

AASIR AZZARMI,

Plaintiff,

-against-

DOE OFFICERS 1-10,

Defendants.

22-CV-5726 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff filed this action *pro se*. On January 13, 2023, because Plaintiff's complaint lacked the facts necessary for the Court to determine whether Plaintiff was entitled to relief, the Court denied, without prejudice, Plaintiff's request for an order pursuant to *Valentin v. Dinkins*, 121 F.3d 72, 76 (2d Cir. 1997), to assist Plaintiff in identifying Defendants. (ECF No. 5 at 3.) The Court did, however, grant Plaintiff 60 days' leave to amend his complaint to detail where the events giving rise to his claim occurred; to identify, if Plaintiff was able, the federal agency that employs the officers; and what each Defendant did or failed to do that violated his rights (*Id.* at 3, 4.) On March 29, 2023, because Plaintiff did not file an amended complaint as directed and did not communicate with the Court in writing or otherwise, the Court dismissed Plaintiff's complaint for failure to state a claim and directed the Clerk of Court to enter judgment in this case. (ECF No. 6.) On April 13, 2023, Plaintiff filed a motion challenging the March 29, 2023 dismissal order.

The Court liberally construes the submission as a motion to alter or amend judgment under Fed. R. Civ. P. 59(e), a motion for reconsideration under Local Civil Rule 6.3, and a motion for relief from a judgment or order under Fed. R. Civ. P. 60(b). *See Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006); *see also Tracy v. Freshwater*, 623 F.3d 90,

101 (2d Cir. 2010) (The solicitude afforded to *pro se* litigants takes a variety of forms, including liberal construction of papers, “relaxation of the limitations on the amendment of pleadings,” leniency in the enforcement of other procedural rules, and “deliberate, continuing efforts to ensure that a *pro se* litigant understands what is required of him”) (citations omitted). After reviewing the arguments in Plaintiff’s submission, the Court denies the motion.

## DISCUSSION

### A. Motion to Alter or Amend the Judgment under Fed. R. Civ. P. 59(e)

A party who moves to alter or amend a judgment under Fed. R. Civ. P. 59(e) must demonstrate that the Court overlooked “controlling law or factual matters” that had been previously put before it. *R.F.M.A.S., Inc. v. Mimi So*, 640 F. Supp. 2d 506, 509 (S.D.N.Y. 2009). “Such motions must be narrowly construed and strictly applied in order to discourage litigants from making repetitive arguments on issues that have been thoroughly considered by the court.” *Range Road Music, Inc. v. Music Sales Corp.*, 90 F. Supp. 2d 390, 391-92 (S.D.N.Y. 2000); *see also SimplexGrinnell LP v. Integrated Sys. & Power, Inc.*, 642 F. Supp. 2d 206 (S.D.N.Y. 2009) (“A motion for reconsideration is not an invitation to parties to ‘treat the court’s initial decision as the opening of a dialogue in which that party may then use such a motion to advance new theories or adduce new evidence in response to the court’s ruling.’”) (internal quotation and citations omitted).

Plaintiff alleges that because the Court warned Plaintiff in another case, pursuant to 28 U.S.C. § 1651, that further duplicative or frivolous litigation in this court may result in an order barring Plaintiff from filing any new actions in this court without first seeking permission of the court, *see Azzarmi v. Sedgwick Claims Mgmt. Sys., Inc.*, ECF 1:22-CV-5868, 5 (S.D.N.Y. Feb. 6, 2023), he believed that his right to amend in this case had been revoked. Because this action was not a new action but was, in fact, an action that Plaintiff filed before the Court issued its warning,

the warning did not apply to this action. Furthermore, a review of the Court's docket for this case makes clear that there is nothing on the docket that supports Plaintiff's belief. The docket also does not reflect receipt of any letters from Plaintiff inquiring about the status of the case or requesting clarification about his ability to proceed in this case. Two weeks after Plaintiff's time to amend his complaint elapsed, the Court entered judgment dismissing Plaintiff's complaint for failure to state a claim.

Plaintiff has failed to demonstrate that the Court overlooked any controlling decisions or factual matters with respect to the dismissed action. The Court therefore denies Plaintiff's motion under Fed. R. Civ. P. 59(e).

**B. Motion for Reconsideration under Local Civil Rule 6.3**

The standards governing Fed. R. Civ. P. 59(e) and Local Civil Rule 6.3 are the same. *R.F.M.A.S., Inc.*, 640 F. Supp. 2d at 509 (discussion in the context of both Local Civil Rule 6.3 and Fed. R. Civ. P. 59(e)). Thus, a party seeking reconsideration of any order under Local Civil Rule 6.3 must demonstrate that the Court overlooked "controlling law or factual matters" that had been previously put before it. *R.F.M.A.S., Inc.*, 640 F. Supp. 2d at 509.

A motion brought under Local Civil Rule 6.3 must be filed within 14 days "after the entry of the Court's determination of the original motion, or in the case of a court order resulting in a judgment, within . . . (14) days after the entry of the judgment." *Id.*

The Court therefore denies Plaintiff's motion under Local Civil Rule 6.3, for the same reasons as his motion under Rule 59(e), because he has failed to demonstrate that the Court overlooked any controlling decisions or factual matters with respect to the dismissed action.

**C. Motion for Reconsideration under Fed. R. Civ. P. 60(b)**

Under Fed. R. Civ. P. 60(b), a party may seek relief from a district court's order or judgment for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason justifying relief.

Fed. R. Civ. P. 60(b). A motion based on reasons (1), (2), or (3) must be filed “no more than one year after the entry of the judgment or order or the date of the proceeding.” Fed. R. Civ. P. 60(c)(1).

The Court has considered Plaintiff’s arguments, and even under a liberal interpretation of his motion, Plaintiff has failed to demonstrate that any of the grounds listed in the first five clauses of Fed. R. Civ. P. 60(b) apply. Therefore, the motion under any of these clauses is denied.

To the extent that Plaintiff seeks relief under Fed. R. Civ. P. 60(b)(6), the motion is also denied. “[A] Rule 60(b)(6) motion must be based upon some reason other than those stated in clauses (1)-(5).” *United Airlines, Inc. v. Brien*, 588 F.3d 158, 175 (2d Cir. 2009) (quoting *Smith v. Sec’y of HHS*, 776 F.2d 1330, 1333 (6th Cir. 1985)). A party moving under Rule 60(b)(6) cannot circumvent the one-year limitation applicable to claims under clauses (1)-(3) by invoking the residual clause (6) of Rule 60(b). *Id.* A Rule 60(b)(6) motion must show both that the motion was filed within a “reasonable time” and that “‘extraordinary circumstances’ [exist] to warrant relief.” *Old Republic Ins. Co. v. Pac. Fin. Servs. of America, Inc.*, 301 F.3d 54, 59 (2d Cir. 2002) (per curiam) (citation omitted).

Plaintiff has failed to demonstrate that extraordinary circumstances exist to warrant relief under Fed. R. Civ. P. 60(b)(6). *See Ackermann v. United States*, 340 U.S. 193, 199-202 (1950).

### CONCLUSION

Plaintiff’s motion for reconsideration (ECF No. 8) is denied.

This action is closed. The Clerk of Court will only accept for filing documents that are directed to the United States Court of Appeals for the Second Circuit. If Plaintiff files other documents that are frivolous or meritless, the Court will direct Plaintiff to show cause why Plaintiff should not be barred from filing further documents in this action.

If Plaintiff wishes to pursue the claims he attempted to assert in this action, he is free to file a new action in this court that addresses the deficiencies noted in the Court's January 13, 2023, order to amend. (ECF No. 5.) The Court advises Plaintiff that a new action must be accompanied by the \$402.00 in filing fees required to file an action in this court, or a completed and signed request to proceed *in forma pauperis* ("IFP").

The Court's warning, pursuant to 28 U.S.C. § 1651, that further duplicative or frivolous litigation in this court may result in an order barring Plaintiff from filing any new actions in this court without first seeking permission of the court remains in effect. *See Azzarmi*, ECF 1:22-CV-5868, 5.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: April 27, 2023  
New York, New York

/s/ Laura Taylor Swain  
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LAURA TAYLOR SWAIN  
Chief United States District Judge